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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY SACRAMENTO

FAIR POLITICAL PRACTICES COMMISSION,	)	Case No.
a state agency,)	
	)	FPPC No.: 02/522
Plaintiff,)	
	)	MEMORANDUM OF POINTS AND
v.	)	AUTHORITIES IN SUPPORT OF
	)	MOTION FOR PRELIMINARY
AMERICAN CIVIL RIGHTS COALITION, INC.,	)	INJUNCTION
WARD CONNERLY, and DOES 1-50,)	
	)	(CCP § 526, Gov. Code § 91003)
Defendants.)	
	)	Date:
	)	Time:
	)	Dept:
	)	Judge:
	)	Date Action Filed:
	)	No Trial Date Set

I. INTRODUCTION

In this case, Plaintiff Fair Political Practices Commission (the “Commission”), a state agency, seeks among other relief, an injunction to enjoin defendants American Civil Rights Coalition, Inc. (hereafter “defendant ACRC”) and Ward Connerly from committing continuing and future violations of

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1 the Political Reform Act (the “Act”),¹ and to compel compliance with the provisions of the Act. The
2 authority for such relief is expressly set forth in the Act at § 91003, and the Commission as the civil
3 prosecutor for the state has the authority to bring this civil action to enforce the Act. (§ 91001, subd.
4 (b).)

5 As set forth in detail below, defendant ACRC is a “committee” under the Act. It has received
6 over a million dollars in contributions used to support the qualification and passage of Proposition 54,
7 regarding “Classification by Race, Ethnicity, Color or National Origin,” the so-called “Racial Privacy
8 Initiative.” It has contributed over a million dollars to the Racial Privacy Initiative Sponsored by
9 American Civil Rights Coalition Committee (the “RPI Committee”) to support the qualification and
10 passage of Proposition 54. Proposition 54 is to be voted on by the People of the State of California on
11 October 7, 2003.

12 By virtue of its status as a committee under the Act, defendant ACRC had and has a continuing
13 obligation to file campaign statements with the Secretary of State, disclosing the sources of its
14 contributions in support of the initiative. Defendant ACRC has filed no campaign statements, and has
15 refused the demand of the Commission that it immediately comply with its obligations under the Act to
16 file past statements, and to file such other campaign statements as may become due between now and
17 the upcoming election. Absent intervention by this court in the form of injunctive relief, the People of
18 the State of California will continue to be deprived of critical information regarding the financial
19 supporters of Proposition 54, and that will assist the voters in deciding whether Proposition 54 will
20 become the law of the state. The Act clearly envisions that the Commission may, and should, seek
21 injunctive relief to prohibit violations of the Act and compel compliance with the Act so that voters
22 “may be fully informed and improper practices may be inhibited.” (§ 81002, subd. (a).)

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26 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014. All statutory references are
27 to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are
28 contained in §§ 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title
2, Division 6 of the California Code of Regulations, unless otherwise indicated.

II. STATEMENT OF FACTS

Defendant ACRC is a nonprofit corporation organized under the laws of the State of California. Defendant Connerly is the founder and chief executive officer of defendant ACRC. According to defendant Connerly, defendant ACRC solicits contributions nationally in furtherance of its stated goals of ending racial preferences and classifications. Defendant ACRC was formed in 1997 after the success of California's Proposition 209, ending affirmative action in California. Since its formation, defendant ACRC has worked to qualify ballot initiatives and pass legislation in various states, including Florida, Michigan, Washington, and Texas, in addition to the current measure in California, in furtherance of its stated goals.

Sometime in 2001, defendant ACRC began working to qualify an initiative, for the California ballot, preventing state and local governments from using or collecting racial and ethnic information about people in all but a few specified situations. The RPI Committee was organized as a primarily formed ballot measure committee for the purpose of supporting this initiative. As a recipient committee under Government Code section 82013, subdivision (a), the RPI Committee has been filing periodic campaign disclosure statements.

According to the campaign disclosure statement filed with the Secretary of State by the RPI Committee for the period ending December 31, 2001, defendant ACRC made \$50,000 in monetary contributions and \$17,094 in nonmonetary contributions to the RPI Committee by the end of 2001. According to campaign disclosure statements filed with the Secretary of State by the RPI Committee for 2002, defendant ACRC made \$1,520,400 in monetary contributions to the RPI Committee during the first six months of 2002, and \$266,006 in nonmonetary contributions to the RPI Committee during the entire year. Statements filed with the Secretary of State by the RPI Committee indicate that defendant ACRC made an additional \$14,998.15 in nonmonetary contributions during the first half of 2003.

All totaled, the RPI Committee's disclosure statements filed with the Secretary of State indicate that defendant ACRC contributed \$1,917,811.84 out of the total of \$2,177,995.39 in both monetary and nonmonetary contributions received by the RPI Committee through June 30, 2003.

Defendant ACRC's contributions represent 88 percent of the total contributions received by the RPI Committee. However, the RPI Committee's statements do not indicate the sources of the

1 contributions received from defendant ACRC, and defendant ACRC has failed to file any campaign
2 disclosure statements indicating the sources of the contributions it has received.

3 According to records maintained by the Office of the Secretary of State, in July 2002 the Racial
4 Privacy Initiative qualified for the ballot, and was scheduled to be placed on the 2004 primary election
5 ballot. However, with the certification of the recall election, the Racial Privacy Initiative (Proposition
6 54) was moved and is now scheduled to be voted upon in the October 7, 2003, special election.

7 Acting pursuant to a complaint received alleging violations of the Act, and pursuant to the
8 authority expressly granted it as the civil prosecutor under the Act, the Commission brings this action
9 seeking injunctive relief.

10 **III. ARGUMENT**

11 **A. The Act Expressly Authorizes the Commission to Seek Injunctive Relief as a Remedy** 12 **for Violations of the Act.**

13 Government Code § 91003, subd. (a) states in pertinent part:

14 Any person residing in the jurisdiction may sue for injunctive relief
15 to **enjoin violations or to compel compliance** with the provisions of this
16 title. The court may in its discretion require any plaintiff other than the
commission to file a complaint with the commission prior to seeking
injunctive relief. (Emphasis added.)

17 “The Commission has primary responsibility for the impartial, effective administration and
18 implementation of [the Act].” (Gov. Code § 83111.) Accordingly, Government Code § 91001 states in
19 pertinent part:

20 The civil prosecutor is primarily responsible for enforcement of the civil
21 penalties and remedies of this title. The civil prosecutor is the commission
22 with respect to the state or any state agency, except itself....The civil
prosecutor may bring any civil action under this title which could be
brought by a voter or resident of the jurisdiction.

23 In the exercise of its authority as the civil prosecutor for the state, the Commission is bringing this action
24 to enforce the Act’s campaign disclosure provisions against defendant ACRC.

25 **B. Public Policy Supports Granting Injunctive Relief in this Case.**

26 In the wake of the Watergate scandal, the People of the State of California enacted the Political
27 Reform Act by initiative in 1974. The Act seeks to ensure that State and local government “serve the
28 needs and respond to the wishes of all citizens equally, without regard to their wealth.” (Gov. Code §

1 81001, subd. (a).) The concurring opinion in *Albertson's, Inc. v. Young* (2003) 107 Cal. App. 4th 106,
2 recognizes that adoption of the Act through the initiative process reflected concern that California has
3 “increasingly become subject to the domination and control of monied special interests, leaving the
4 average citizen without an effective voice in government.” (Id. at 133 (Sims, J. concurring).)

5 The Act finds, among other things, that “existing laws for disclosure of campaign receipts and
6 expenditures have proved to be inadequate” (§ 81001, subd. (d)), and that “previous laws regulating
7 political practices have suffered from inadequate enforcement” (§ 81001.) Purposes of the Act include
8 fully informing voters and inhibiting improper practices (§ 81002, subd. (a)) and providing adequate
9 enforcement mechanisms to public officials and private citizens so that the Act will be “vigorously
10 enforced.” (§ 81002.)

11 Californians have voted on numerous occasions to strengthen the Act by establishing
12 contribution limits. Proposition 34, adopted by the voters in the November 2000 general election,
13 established those limits after their previous efforts succumbed to judicial challenges. (Gov. Code §§
14 85300 et seq.) Notably, Proposition 34 also increased the administrative penalties in conjunction with
15 these new limits. (Gov. Code § 83116, subd. (c).)

16 Additional indicia of the voters' determination to protect the integrity of their governmental
17 processes from the corrupting influence of money include the Act's provision for “vigorous
18 enforcement” (§ 81002(f)), the requirement that the Act be liberally construed in favor of the purposes
19 of the Act (§ 81003), and the severe restrictions on the Legislature's power to amend the Act (§ 81012
20 (a)). Any amendment to the statute must “further its purposes” and must be passed in each house of the
21 Legislature by a two-thirds vote of the membership. (§ 81012 (a).) Alternatively, the Act may only be
22 amended or repealed by a statute that “becomes effective only when approved by the electors.”
23 (§ 81012 (b).)

24 **C. Code of Civil Procedure § 526 Supports the Issuance of Preliminary Injunction.**

25 Beyond the express authority for, and strong public policy in support of, injunctive relief as set
26 forth in the Act, the Code of Civil Procedure sets forth specific grounds for the issuance of a preliminary
27 injunction that are right on point in this case. Under subdivisions (a)(2) and (4) of § 526 of the Code of /
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Civil Procedure, where irreparable injury will result and pecuniary compensation will be an inadequate remedy, injunctive relief may issue.

In this case, there is an impending election regarding Proposition 54 to be held on October 7, 2003. Proposition 54 addresses an important and controversial subject in the state, and its passage or defeat will affect public policy and potentially will have numerous effects on the operation of public and private entities for years to come. As discussed below, defendant ACRC is far and away the largest contributor to the passage of Proposition 54, and is indeed its sponsor. Because defendant ACRC is refusing to file campaign statements as a recipient committee under the Act, disclosing its own contributors, the voting public will be deprived of knowing who is supporting this major public policy initiative prior to the election. The Act recognizes this vital information to the voting public, with one of its expressed purposes being that:

Receipts and expenditures in election campaigns should be **fully and truthfully disclosed in order that the voters may be fully informed** and improper practices may be inhibited. (Emphasis added.)

This is information that may affect the decisions of voters regarding Proposition 54 on October 7, 2003, and possibly the outcome the election itself. While the Commission is also seeking civil penalties in this action, such penalties simply cannot make up for the deprivation of lawful information to the voting public, let alone remedy an election outcome that may possibly be affected by this lack of vital information. It would be difficult to find a more compelling example of irreparable injury to the People of the State of California and the inadequacy of legal remedies justifying the issuance of injunctive relief than is before the court in this case.

D. Defendant ACRC Is a “Committee” within the Meaning of the Act.

As set forth in the Declaration of Sue Straine in Support of Motion for Preliminary Injunction, Defendant Connerly, in an investigatory interview on June 17, 2003, stated that he is the founder and chief executive officer of defendant ACRC. Based upon his statements, defendant Connerly is “primarily responsible for initiating and implementing the political activity” of defendant ACRC, and is, thus, its treasurer by operation of law under regulation 18427, subdivision (d). Defendant Connerly stated that defendant ACRC is a nationally based nonprofit organization formed after the passage of Proposition 209 (Prohibition Against Discrimination or Preferential Treatment by State and Other Public

1 Entities. Initiative Constitutional Amendment) in California in 1996, with the goal of promoting ballot
2 measures and legislation in various states aimed at removing racial and gender preferences and
3 classifications in government. According to defendant Connerly, defendant ACRC is supported by
4 donations from various donors, but he has vowed not to reveal the identities of the donors, because when
5 campaign contributors were revealed in relation to Proposition 209, the donors suffered retaliation. He
6 stated that he had even promised some of defendant ACRC's donors that their identities would not be
7 revealed.

8 The definition of a person under the Act is very broadly stated as follows:

9 "Person" means an individual, proprietorship, firm, partnership, joint
10 venture, syndicate, business trust, company, **corporation**, limited liability
11 company, association, committee, and **any other organization or group
of persons acting in concert.** (§ 82047.)

12 As a nonprofit corporation organized under the laws of California, defendant ACRC is a person within
13 the meaning of the Act.

14 Section 82013 defines a committee in part as follows:

15 "Committee" means any person or combination of persons who directly or
16 indirectly does any of the following:

17 (a) Receives contributions totaling one thousand dollars (\$ 1,000) or more
18 in a calendar year.

19 According to the campaign statements filed by the RPI Committee, defendant ACRC has
20 contributed over \$1.8 million to the RPI Committee to support the qualification and passage of
21 Proposition 54 between July 1, 2001 and June 30, 2003. In 2001, defendant ACRC gave the RPI
22 Committee \$67,094 in total contributions. In 2002, defendant ACRC gave the RPI Committee
23 \$1,786,406. According to the RPI Committee's campaign statements, defendant ACRC has not made
24 any monetary contributions to the RPI Committee since June of 2002, but defendant ACRC has
25 continued making nonmonetary contributions in the form of staff services and salaries. Over the
26 lifetime of the RPI Committee from July 1, 2001, to June 30, 2003, defendant ACRC made 88% of the
27 total contributions received by the RPI Committee. Defendant Connerly has admitted that donors to
28 defendant ACRC are the sources of those contributions. Therefore, defendant ACRC has taken in well
over \$1,000 from its donors, and met the \$1,000 threshold set forth in § 82013, subdivision (a).

1 The only remaining question in determining whether defendant ACRC is a “committee” under
2 the Act, is whether donations received by defendant ACRC are “contributions” under the Act.

3 Section 82015 defines a contribution in part as follows:

4 "Contribution" means a payment, a forgiveness of a loan, a payment of a
5 loan by a third party, or an enforceable promise to make a payment except
6 to the extent that full and adequate consideration is received, unless it is
clear from the surrounding circumstances that it is not made for political
purposes.

7 Regulation 18215 further delineates the definition of a contribution as follows:

8 (a) A contribution is any payment made for political purposes for which
9 full and adequate consideration is not made to the donor. A payment is
made for political purposes if it is:

10 (1) For the purpose of influencing or attempting to influence the action of
11 the voters for or against the nomination or election of a candidate or
candidates, or the qualification or passage of any measure...

12 Regulation 18215 goes on to state:

13 (b) The term "contribution" includes:

14 (1) Any payment made to a person or organization other than a candidate
15 or committee, when, at the time of making the payment, the donor knows
16 or has reason to know that the payment, or funds with which the payment
will be commingled, will be used to make contributions or expenditures. If
17 the donor knows or has reason to know that only part of the payment will
be used to make contributions or expenditures, the payment shall be
18 apportioned on a reasonable basis in order to determine the amount of the
contribution.

19 From defendant Connerly’s own statements as to the express purpose of defendant ACRC, as
20 well as the actions of defendant ACRC in contributing over \$1.8 million to the RPI Committee,
21 constituting almost the total budget of the RPI Committee, it is clear that under the above subdivisions
22 of regulation 18215, donations to defendant ACRC constitute contributions under the Act. Since the
23 express purpose of defendant ACRC is to pass measures such as Proposition 54, it can be reasonably
24 inferred that persons contributing to defendant ACRC would know or have reason to know that
25 donations made to defendant ACRC would be used to make contributions to or expenditures on behalf
26 of Proposition 54.

27 However, regulation 18215 goes on to state:

28 There shall be a presumption that the donor does not have reason to know
that all or part of the payment will be used to make expenditures or
contributions, unless the person or organization has made expenditures or

1 contributions of at least one thousand dollars (\$ 1,000) in the aggregate
2 during the calendar year in which the payment occurs, or any of the
immediately preceding four calendar years.

3 The previous argument would seem to rebut the presumption with respect to lack of knowledge provided
4 in Regulation 18215 regarding **all** contributions made to ACRC. However, even if the presumption as to
5 lack of knowledge does come into play, it would only apply to the sources of the contributions made to
6 defendant ACRC during 2001. Since defendant ACRC had made contributions of \$67,094 to the RPI
7 Committee in 2001, the presumption that the donors to defendant ACRC during 2002 had no knowledge
8 of its activities would not apply because the organization had made contributions of \$1,000 or more to
9 the RPI Committee during the previous calendar year. In any case, it would be difficult to see how that
10 presumption could carry the day when the express purpose of the organization is to do precisely what it
11 is doing in supporting Proposition 54.

12 In reality, the effort to shield contributors to defendant ACRC from disclosure has nothing to do
13 with any assertion that defendant ACRC is not a committee under the Act. Indeed, an interpretation of
14 the Act under which defendant ACRC is not a committee, would open the door to the wholesale use of
15 corporate straw men to avoid disclosure of the financial supporters of measures and candidates. The
16 actual basis for nondisclosure in this case is defendant Connerly's purported concern for embarrassment
17 of and retaliation against defendant ACRC's contributors, upon the public learning that they are
18 supporting Proposition 54. While defendant Connerly's concern in this regard may be sincere, the Act
19 provides no exception to its campaign disclosure requirements based upon contributors' embarrassment
20 or fears arising from their support of a given ballot measure, or candidate.

21 **E. Defendants ACRC and Connerly are Violating, and Will Continue to Violate the Act,**
22 **Absent Injunctive Relief.**

23 As a committee under the Act, defendant ACRC has obligations to periodically file campaign
24 statements with the Secretary of State under the Act. The following statutes set forth the specifics of
25 such filing obligations.

26 Section 82027.5 defines a state general purpose committee as follows:

27 A "state general purpose committee" is a committee to support or oppose
28 candidates or measures voted on in a state election, or in more than one
county.

1 Defendant ACRC is not limited to supporting a single candidate or measure, but rather any measure that
2 fits certain parameters, such as Proposition 54. As such, it is a state general purpose committee.

3 Section 84200, subdivision (a) sets forth the fundamental filing obligation of any committee
4 covered by the Act. It provides that:

5 ...elected officers, candidates, and committees pursuant to subdivision
6 (a) of Section 82013 shall file semiannual statements each year no
7 later than July 31 for the period ending June 30, and no later than
January 31 for the period ending December 31.

8 There is no dispute that defendant ACRC has not filed any semiannual campaign statements with the
9 Secretary of State disclosing its contributors. According to the RPI Committee's campaign statements,
10 in the second semiannual reporting of 2001, defendant ACRC contributed over \$50,000 to the RPI
11 Committee. It contributed over 1.7 million dollars to the RPI Committee during the two semiannual
12 reporting periods of 2002.² The People of the State of California have been and continue to be deprived
13 of information as to who is financially supporting Proposition 54. This is information that must be
14 disclosed under the Act. Moreover, it is information that must be disclosed prior to the upcoming
15 election, if the Act's goal "that voters may be fully informed" is to have any meaning. This is why the
16 Commission is requesting that this court grant injunctive in this matter. Post election disclosure and/or
17 civil penalties simply are inadequate to serve the purposes of the Act.

18 Additionally, § 84202.5, subdivision (a) provides that:

19 Any candidate or any committee pursuant to subdivision
20 (a) of Section 82013 which makes contributions totaling ten thousand
21 dollars (\$10,000) or more in connection with an election, including
22 a runoff election, shall file a supplemental preelection statement no
23 later than 12 days before the election, for the period ending 17
days before the election. This statement shall be filed with each
office with which the candidate or committee filing the statement is
required to file its next campaign statement pursuant to Section
84215.

24 Under § 840202.5, defendant ACRC has a prospective obligation to file a preelection campaign
25 statement no later than 12 days before the upcoming election. Preelection reports are supplemented by
26 the requirement that committees file late contribution reports for contributions of \$1,000 or more in the
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28 ² Defendant ACRC also has an obligation to file a semiannual campaign statement for the first half of 2003,
however, the RPI Committee's campaign statement does not indicate that it received any monetary contributions from ACRC
during that period.

1 final the 17 days preceding the election. (§§ 84203, 82036.) Preelection and late contribution reports
2 perform the critical function of informing voters of the sources of last minute financial support for a
3 measure. These last minute contributions that can be decisive in an election, and the voters are entitled
4 to information about these contributions and their sources under the Act. Absent this court's
5 intervention, based upon defendant ACRC's continuing defiance of the Act, it will not be filing any such
6 preelection and late contribution reports.

7 Finally, § 84605, subdivision (b) mandates that a general purpose committee receiving
8 contributions or making expenditures of \$50,000, or more in support of a state measure must also file its
9 campaign statements electronically with the Secretary of State. The electronic filing obligation further
10 underscores the Act's overriding purpose to get critical information to the voters on a timely basis. As
11 discussed above, defendant ACRC meets the \$50,000 threshold for contributions received triggering the
12 electronic filing obligation. As with its other obligations under the Act, defendant ACRC has not
13 electronically filed any campaign statements and will persist in this continuing violation of the Act,
14 unless enjoined by this court.

15 CONCLUSION

16 As set forth above, the Act is clear that the ACRC must file campaign statements disclosing its
17 contributors going back to at least 2002, and in the first semiannual reporting period of 2003. Defendant
18 ACRC will also be required to file a preelection campaign statement, as well as late contribution reports
19 for contributions made to it of \$1,000 or more. Defendant ACRC is openly defying its obligations under
20 the Act to the detriment of the People of the State of California. If allowed to continue in its defiance of
21 the law, Defendant ACRC's actions may affect the outcome of the upcoming election, and thereby affect
22 California public policy for years to come. Because upon the gravity of these issues, the Commission is
23 requesting that this court intervene and grant injunctive relief enjoining Defendants' continuing
24 violations of the Act and compelling compliance with the Act both retrospectively and prospectively.

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1 Dated:

FAIR POLITICAL PRACTICES COMMISSION

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